

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-199

In the Matter of

Amendment of Section 73.202(b), RM-8050
Table of Allotments,
FM Broadcast Stations.
(Smiths, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 18, 1992; Released: September 8, 1992

Comment Date: October 30, 1992

Reply Comment Date: November 16, 1992

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Smiths Communications ("petitioner") requesting the allotment of FM Channel 267A to Smiths, Alabama, as that community's first local aural transmission service. Petitioner stated its intention to apply for Channel 267A if allotted to Smiths.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. Smiths is not listed in the U.S. Census.

3. In light of Smiths' omission from the U.S. Census, yet in recognition of Commission precedent requiring adequate information in such situations to demonstrate that a locality qualifies as a community for allotment purposes,¹ petitioner states that Smiths is listed in the *Rand McNally Atlas*, which attributes it with a population of 1,700.² In addition, petitioner advises that Smiths contains civic organizations, businesses, religious institutions, a bank, post office, water authority, schools, churches and a medical facility. Specifically, petitioner advises that Smiths is served by Smiths Station High School, Smiths Station Primary School, twelve churches, including the Smiths Station Baptist Church, and businesses such as Smiths Big Buy Food Store, Smiths Flower Shop, Southtrust Bank, Smiths Medical Clinic (the latter of which petitioner advises a recent article appeared in the *Columbus (Georgia) Ledger-*

Enquirer), hardware stores and restaurants. Moreover, petitioner advises that the Columbus (Georgia)-Phenix City (Alabama) telephone directory contains numerous Smiths residential as well as business listings. Based upon the petitioner's assertions, we will not request additional demographic data at this time.

4. A staff engineering study reveals that Channel 267A can be allotted to Smiths in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located 7.4 kilometers (4.6 miles) southwest of the community.³

5. We believe the public interest would be served by seeking comments on the requested allotment of Channel 267A to Smiths, Alabama, since it would provide a first local aural transmission service to the community. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Smiths, as follows:

City	Present	Channel No. Proposed
Smiths, Alabama	--	267A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **October 30, 1992**, and reply comments on or before **November 16, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David M. Silverman, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

¹ See, e.g., *Gretna, FL, et. al.*, 6 FCC Rcd 633 (1991); *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Statenville, GA*, 5 FCC Rcd 2685 (1990); *East Hemet, CA, et. al.*, 4 FCC Rcd 7895 (1989); and *Beaver Springs, PA*, 4 FCC Rcd 5373 (1989).

² However, geographical location alone is not sufficient to establish "community" status. See *Vimville, MS*, 48 Fed. Reg.

5974 (1983); *Hannibal, OH*, 6 FCC Rcd 2144 (1991); and *Columbia, CA*, 6 FCC Rcd 3292 (1991).

³ Coordinates used for Channel 267A are 32-28-42 and 85-08-06. The site restriction is required to avoid a short spacing to the licensed site of Station WKHX-FM, Channel 268C, Marietta, Georgia, at coordinates 33-48-27 and 84-20-26.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.